

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAN 17 2017

UNITED STATES OF AMERICA,

*

BY

v.

Criminal Action No.: RDB-12-0333

KEVIN BERNARD SMITH,

*

Defendant.

*

* * * * *

MEMORANDUM ORDER

Via Memorandum Opinion and Order dated November 23, 2016 (ECF Nos. 134 & 135), this Court denied the *pro se* Petitioner Kevin Bernard Smith's ("Petitioner" or "Smith") Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (ECF No. 106) and Amended Motion to Vacate (ECF No. 112). Additionally, via that same Memorandum Opinion and Order, this Court denied Petitioner a certificate of appealability because reasonable jurists would not find this Court's assessment of Petitioner's constitutional claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003).

Petitioner has subsequently filed a Notice of Appeal in this Court (ECF No. 138)¹. Petitioner's Notice of Appeal has been transmitted to the United States Court of Appeals for the Fourth Circuit, and an appellate case captioned *United States v. Smith*, No. 17-6048 has been opened in the Fourth Circuit. Additionally, Petitioner has filed a Motion for Extension of Time to Request a Certificate of Appealability (ECF No. 139). That Motion remains

¹ Petitioner initially filed his Notice of Appeal in the United States Court of Appeals for the Fourth Circuit. Via correspondence dated January 13, 2017 (ECF No. 138), the Clerk of the Fourth Circuit returned that Notice to this Court where it was refiled pursuant to Rule 4(d) of the Federal Rules of Appellate Procedure.

pending before this Court. As discussed *supra*, this Court has already denied Petitioner a certificate of appealability via Order dated November 23, 2016 for the reasons stated in this Court's Memorandum Opinion of that same day. Accordingly, Petitioner's Motion for Extension of Time to Request a Certificate of Appealability (ECF No. 139) is DENIED AS MOOT.

CONCLUSION

For the foregoing reasons, Petitioner's Motion for Extension of Time to Request a Certificate of Appealability (ECF No. 139) is DENIED AS MOOT.

A separate order follows.

Dated: January 17, 2017

Richard D. Bennett

Richard D. Bennett
United States District Judge